

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:09CR3019
)	
V.)	
)	MEMORANDUM
CLARENCE D. HERGERT,)	AND ORDER
)	
Defendant.)	
_____)	

Pending before me is a Motion to Compel Government to Subordinate Lien to Permit Sale of Real Estate. (Filing no. 150.) I have heard from the parties orally and I have received evidence on the motion. The government has filed a Continued Opposition of the United States to Defendant's Motion to Compel Government to Subordinate Lien to Permit Sale of Real Estate. (Filing no. 164.) In that filing, the government admits the following:

Defendant proposes to sell property described as "Lot 2, Block 3, Tri-State Addition to the City of Scottsbluff, Scotts Bluff County, Nebraska" ("Lot 2"). (Ex. 1, Certificate of Title, and Ex. 3, Title Insurance Commitment, Schedule A). Exhibit 3 has been offered previously by Defendant in support of sale. This document lists the owner of the Lot 2 as criminal defendant "Clarence D. Hergert". However, in response to the Court's Order, Defendant produced Exhibit 1, the Certificate of Title for Lot 2. It contains the same property description of "Lot 2, Block 3, Tri-State Addition to the City of Scottsbluff, Scotts Bluff County, Nebraska" ("Lot 2") but identifies the owner as "Hergert Milling, Inc. a Nebraska Corporation". ("Hergert Milling") *The United States does not have a criminal judgment lien against Hergert Milling. The United States has no lien against Hergert Milling to subordinate or release. While this should be the end of the matter as far as the United States is concerned, [additional discussion ensues].*

Id. at CM/ECF pp. 1-2 & ¶ 1 (emphasis added).

The government's admission moots the defendant's motion. Therefore,

IT IS ORDERED that:

1. The United States does not have a criminal judgment lien against Hergert Milling, Inc. The United States has no lien against Hergert Milling, Inc., to subordinate or release. Therefore, to the extent that Hergert Milling, Inc., a Nebraska corporation, is the record title holder of Lot 2, Block 3, Tri-State Addition to the City of Scottsbluff, Scotts Bluff County, Nebraska" ("Lot 2"), Hergert Milling, Inc. may sell and convey said property free and clear of any lien created by the judgment in this case.
2. The Motion to Compel Government to Subordinate Lien to Permit Sale of Real Estate (filing no. 150) is denied as moot.

DATED this 15th day of October, 2013.

BY THE COURT:

Richard G. Kopf
Senior United States District Judge